

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 01-80361

vs.

HON. GEORGE CARAM STEEH

DANIEL TYRONE MCNEIL,

Defendant.

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ORDER DENYING MOTION TO MODIFY SENTENCE (# 254)

Pro se federal prisoner Daniel Tyrone McNeil has filed a motion under 18 U.S.C. § 3582(c)(2), requesting that the court modify his sentence.

McNeil was convicted by a jury in 2001 of bank robbery, in violation of 18 U.S.C. §§ 2 and 2113; carrying or brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(i) & (ii); and possession of a destructive device in furtherance of a crime of violence, in violation of 18 U.S.C. §§ 2 and 924(c)(1)(A) & (B)(ii). After two appeals, McNeil was ultimately sentenced to sixty months of imprisonment for the bank robbery and a consecutive term of thirty years for the other two merged offenses. The court denied McNeil's subsequent motion filed under 28 U.S.C. § 2255 as meritless, and both this court and the Sixth Circuit declined to grant McNeil a certificate of appealability.

By its own terms, a motion brought under § 3582(C)(2) may grant relief only “when a defendant is ‘sentenced to a term of imprisonment based on a sentencing

range that has *subsequently* been lowered by the Sentencing Commission.” *U.S. v. Carter*, 500 F.3d 486, 489 (quoting statute) (emphasis added). In the instant motion, McNeil points to “amendment 599 appx. C, effective date November 1, 2000.” The amendment he refers to affected Note 2 of the Application Notes to the Commentary to U.S.S.G. § 2K2.4. It clarified that when a district court is sentencing under 18 U.S.C. § 924(c), enhancing the associated sentence for the underlying offense on the basis of conduct involving the use of a firearm represents impermissible double counting of that conduct.

In the instant motion, McNeil is citing an amendment that took place prior to his original sentencing, making § 3582(C)(2) inapplicable here. Furthermore, while McNeil suggests that “double counting” took place in his case, he makes no such demonstration. The motion to modify sentence is DENIED.

IT IS SO ORDERED.

Dated: September 14, 2012

s/George Caram Steeh
 GEORGE CARAM STEEH
 UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record and on Daniel T. McNeil, #29457-039, Federal Medical Center, P. O. Box 14500, Lexington, KY 40512-4500 on September 14, 2012, by electronic and/or ordinary mail.

s/Barbara Radke
 Deputy Clerk